

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JULIE DAHLREN, et al.,  
Plaintiffs,

v.

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,  
Defendant.

No. CV-08-342-FVS

ORDER DENYING MOTION TO  
REMAND

**THIS MATTER** comes before the Court without oral argument based upon the plaintiffs' motion to remand. They are represented William C. Maxey and Mark J. Harris. The defendant is represented by Pamela M. Andrews and Sasha S. Philip.

**BACKGROUND**

Julie Dahlren and her husband, Ernest, filed a complaint in Okanogan County Superior Court alleging Mrs. Dahlren was burned by a laptop computer that was manufactured by International Business Machines Corporation ("IBM"). The Dahlrens seek unspecified damages based upon theories of negligence and product liability. IBM removed the action to federal court because the parties are citizens of different states. 28 U.S.C. § 1441(a). The Dahlrens move to remand the action to state court on the ground IBM has failed to establish that the amount in controversy exceeds \$75,000. 28 U.S.C. §§ 1447(c),

1 1332(a).

2 **STANDARD**

3 When a plaintiff files a complaint in state court that does not  
4 specify the amount of damages she is seeking, and the defendant  
5 removes the case to federal court based upon diversity of citizenship,  
6 the defendant bears the burden of establishing, by a preponderance of  
7 the evidence, that the amount in controversy exceeds \$75,000. See,  
8 e.g., *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th  
9 Cir.2007); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th  
10 Cir.1996). In that regard, the Ninth Circuit has endorsed the  
11 following procedure:

12 The district court may consider whether it is "facially  
13 apparent" from the complaint that the jurisdictional amount  
14 is in controversy. If not, the court may consider facts in  
15 the removal petition, and may require parties to submit  
summary-judgment-type evidence relevant to the amount in  
controversy at the time of removal.

16 *Singer v. State Farm Mutual Automobile Ins. Co.*, 116 F.3d 373 (9th  
17 Cir.1997) (internal punctuation and citation omitted).

18 **RULING**

19 The Dahlgrens state they are seeking "approximately" -- and they  
20 emphasize the word "approximately" -- \$2,644.65 in special damages.  
21 However, they refuse to state how much they are seeking in general  
22 damages. Instead, they argue it is incumbent upon IBM to prove by a  
23 preponderance that special and general damages will exceed \$75,000.  
24 At this juncture, the Court has at least two options. It could allow  
25 IBM to conduct discovery regarding the general damages sought by the  
26 Dahlgrens and then conduct a "summary-judgment-type" proceeding to

1 determine whether the amount that the Dahlgrens are seeking exceeds  
2 \$75,000. In the alternative, the Court could consider the injuries  
3 alleged by the Dahlgrens and make a common-sense assessment with  
4 respect to whether a person alleging such injuries will ask a jury to  
5 award in excess of \$75,000. Of the two approaches, the second will  
6 cost less and take less time, so that is the approach the Court will  
7 employ.

8 Mrs. Dahlgren is alleging she suffered second and third degree  
9 burns on her legs. Presumably, she will testify that she experienced  
10 significant pain. As a result, it is more probable than not that she  
11 will ask the jury to award in excess of \$75,000 in general damages.  
12 Thus, it is reasonable to conclude that the amount in controversy  
13 exceeds the jurisdictional amount. The Court properly may exercise  
14 jurisdiction over the subject matter of the Dahlgrens' complaint.

15 **IT IS HEREBY ORDERED:**

16 The Dahlgrens' motion to remand (**Ct. Rec. 4**) is denied.

17 **IT IS SO ORDERED.** The District Court Executive is hereby  
18 directed to enter this order and furnish copies to counsel.

19 **DATED** this 12th day of January, 2009.

20 s/ Fred Van Sickle  
21 Fred Van Sickle  
22 Senior United States District Judge  
23  
24  
25  
26